

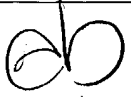


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/547,126	04/11/2000	Fred R. Huege	0438CG-54	4486
7590 03/23/2004				
CHARLES D. GUNTER, JR. WHITAKER, CHALK, SWINDLE & SAWYER, LLP 3500 CITY CENTER TOWER II 301 COMMERCE STREET FORT WORTH, TX 76102		EXAMINER BERNATZ, KEVIN M		
		ART UNIT 1773		
DATE MAILED: 03/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/547,126	<b>Applicant(s)</b> HUEGE ET AL. 	
	<b>Examiner</b> Kevin M Bernatz	<b>Art Unit</b> 1773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4,8-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,8-10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
    1. ☐ Certified copies of the priority documents have been received.  
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
    \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                            | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendments to claims 1, 2 and 12, filed on December 19, 2003, have been entered in the above-identified application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1, 4, 8 – 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. ('573) in view of Karácsonyi née Éva Spindler et al. [hereafter this patent will be referred to as "Karácsonyi et al"] ('410), applicants' admissions and Hansen ('680) for the reasons of record as set forth in Paragraph No. 6 of the Office Action mailed on September 8, 2003.
4. Claims 1, 8 – 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. ('573) in view of applicants' admissions, Hansen ('680) and either Little et al. ('558) or Little et al. (WO '620) for the reasons of record as set forth in Paragraph No. 7 of the Office Action mailed on September 8, 2003.

***Response to Arguments***

**5. The rejection of claims 1, 4, 8 – 10 and 12 under 35 U.S.C § 103(a) – George et al. in view of various references**

Applicant(s) argue(s) that the prior art does not suggest “that the combination of HL with “dolomitic” filler, in select percentages, produces significant advantages in tear strength” (KMB: “HL” = Hydrated Lime) and that the “importance of a particular type filler, as now claimed by Applicant, will be apparent from the discussion which follows” (*page 7 of response*). Applicants further state that the dolomitic limestone filler is limited to the specified species of  $MgCO_3$  or  $MgCO_2 \cdot CaCO_3$  which “is intended to emphasize the unique advantages of the invention which are realized when a “dolomitic filler” is utilized in combination with the HL constituent in the percentages claimed” (*page 9 of response*). Specifically, applicants argue that “[n]one of the prior art cited recognizes that the combination of a dolomitic filler with HL in the percentages recited will greatly improve tear strength of a roofing shingle” The examiner respectfully disagrees.

While the Examiner acknowledges that the prior art fails to teach the specific combination of selecting a dolomitic filler with HL, the prior art recognizes the advantage of adding HL to the broad class of fillers encompassing dolomitic ones. Applicants’ argument of unexpected results has been considered, but is not found persuasive. Specifically, applicants have provided **no evidence** that dolomitic fillers produce unexpected results compared to any other fillers.

The Examiner notes that applicants’ as-filed disclosure includes dolomitic fillers in a laundry list of fillers and *none* of the disclosed embodiments single out dolomitic

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limestone versus any other fillers (*pages 19, 21 and 23 of specification*). As such, applicants' arguments of unexpected results based on the combination of HL with dolomitic fillers is unsubstantiated by the evidence of record, and is therefor not found convincing.

Finally, applicants argue that "the addition of a major amount of a chemically active polymeric ingredient ... would of necessity "materially affect" the basic characteristics of the asphalt composition under consideration" and such materials should be excluded by the use of the transitional phrase "consisting essentially of" in claim 12. The Examiner respectfully disagrees.

As noted in the rejections of record (Paragraph 6 of the Office Action mailed September 8, 2003), the basic **and novel** characteristics of applicants' claimed invention is improved bonding characteristics between the asphaltic base and the aggregate/filler, glass matte or other substrates, as well as improved tear strength of the entire product (*specification, pages 8 – 9*). Applicants even admit in their own specification that the addition of polymeric compounds is within the scope of the disclosed invention (*page 19 of specification*). As such, the Examiner deems that such materials clearly do not effect the basic **and novel** characteristics of the claimed invention.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin M Bernatz whose telephone number is (571) 272-1505. The examiner can normally be reached on M-F, 9:00 AM - 6:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KMB  
March 13, 2004



**Ramsey Zacharia**  
Primary Examiner  
Tech Center 1700